

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	File No. EB-02-DV-439
Radio One Licenses, LLC)	NAL/Acct. No. 200432100002
Licensee of FM Radio Station KKBT)	FRN 0006541486
Los Angeles, California)	
Facility ID # 70038)	
)	
Infinity Broadcasting Operations, Inc.)	NAL/Acct. No. 200432100003
Licensee of FM Radio Station KRTH-FM)	FRN 0003476074
Los Angeles, California)	
Facility ID # 28631)	
)	
Telemundo of Los Angeles License Corporation)	NAL/Acct. No. 200432100004
Licensee of TV Station KWHY-TV)	FRN 0004294179
Los Angeles, California)	
Facility ID # 26231)	

FORFEITURE ORDER

Adopted: December 8, 2004

Released: December 10, 2004

By the Commission:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue monetary forfeitures of ten thousand dollars (\$10,000) each against Infinity Broadcasting Operations, Inc. (“Infinity”), licensee of FM radio station KRTH-FM, Telemundo of Los Angeles License Corporation (“Telemundo”), licensee of TV station KWHY-TV, and Radio One Licenses, LLC (“Radio One”), licensee of FM radio station KKBT, all serving Los Angeles, California, (collectively “Mt. Wilson Licensees”)¹ for willful and repeated violations of Section 1.1310 of the Commission’s Rules (“Rules”)² by failing to comply with radio frequency radiation (“RFR”) maximum permissible exposure (“MPE”) limits applicable to facilities, operations, or transmitters.

2. On October 22, 2003, the Commission issued a Notice of Apparent Liability for Forfeiture (“NAL”)³ to AMFM Radio Licenses, L.L.C. (“AMFM”), licensee of FM radio station KBIG-FM,⁴ Infinity, Telemundo, and Radio One for forfeitures in the amount of ten thousand dollars (\$10,000)

¹Although AMFM Radio Licenses, L.L.C., licensee of KBIG-FM, has paid its forfeiture, it will also be included in the collective term “Mt. Wilson Licensees.”

²47 C.F.R. § 1.1310.

³*In the Matter of AMFM Radio Licenses, L.L.C.*, 18 FCC Rcd 22769 (2003).

⁴AMFM paid the \$10,000 forfeiture on December 12, 2003, and, additionally, filed a response.

each. Each of the parties filed a response to the NAL on December 12, 2003.⁵

II. BACKGROUND

3. **The RFR Rules.** In 1996, the Commission amended its rules to adopt new guidelines and procedures for evaluating the environmental effects of RFR from FCC regulated transmitters.⁶ The Commission adopted maximum permissible exposure (“MPE”) limits for electric and magnetic field strength and power density for transmitters operating at frequencies from 300 kHz to 100 GHz.⁷ These MPE limits, which are set forth in Section 1.1310 of the Rules, include limits for “occupational/controlled” exposure and limits for “general population/uncontrolled” exposure.⁸ The occupational exposure limits apply in situations in which persons are exposed as a consequence of their employment provided those persons are fully aware of the potential for exposure and can exercise control over their exposure.⁹ The limits of occupational exposure also apply in situations where an individual is transient through a location where the occupational limits apply, provided that he or she is made aware of the potential for exposure. The more stringent general population or public exposure limits apply in situations in which the general public may be exposed, or in which persons that are exposed as a consequence of their employment may not be fully aware of the potential for exposure or cannot exercise control over their exposure.¹⁰ Licensees can demonstrate compliance by restricting public access to areas where RFR exceeds the public MPE limits.¹¹

4. The MPE limits specified in Table 1 of Section 1.1310 are used to evaluate the environmental impact of human exposure to RFR and apply to “...all facilities, operations and

⁵See Response of AMFM Radio Licenses, Inc., dated December 12, 2003 (“AMFM Response”); Response of Radio One Licenses, LLC, dated December 12, 2003 (“Radio One Response”); Response of Infinity Broadcasting Operations, Inc., dated December 12, 2003 (“Infinity Response”); and Response of Telemundo of Los Angeles License Corporation, dated December 12, 2003 (“Telemundo Response”). The Mt. Wilson Licensees sought and received an extension of time from the Enforcement Bureau’s Spectrum Enforcement Division to file their responses on December 12, 2003.

⁶*Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, Report and Order*, ET Docket No. 93-62, 11 FCC Rcd 15123 (1996) (“*RF First Report and Order*”), recon. granted in part, *First Memorandum Opinion and Order*, 11 FCC Rcd 17512 (1996), recon. granted in part, *Second Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd 13494 (1997) (“*RF Second Memorandum Opinion and Order.*”)

⁷See 47 C.F.R. § 1.1310, Table 1. The MPE limits are generally based on recommended exposure guidelines published by the National Council on Radiation Protection and Measurements (“NCRP”) in “Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields,” NCRP Report No. 86, Sections 17.4.1, 17.4.1.1., 17.4.2, and 17.4.3 (1986). In the frequency range from 100 MHz to 1500 MHz, the MPE limits are also generally based on guidelines contained in the RF safety standard developed by the Institute of Electrical and Electronics Engineers, Inc. (“IEEE”) and adopted by the American National Standards Institute (“ANSI”) in Section 4.1 of “IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz,” ANSI/IEEE C95.1-1992 (1992).

⁸Table 1 in Section 1.1310 of the Rules provides that the general population RFR maximum permissible exposure limit for a station operating in the frequency range of 30 MHz to 300 MHz is 0.200 mW/cm² and the general population RFR maximum permissible exposure limit for a station operating in the frequency range of 300 MHz to 1500 MHz is f/1500 mW/cm² or for station KWHY-TV which operates on 518 MHz, 0.345 mW/cm².

⁹47 C.F.R. § 1.1310, Note 1 to Table 1.

¹⁰47 C.F.R. § 1.1310, Note 2 to Table 1.

¹¹See, for example, *OET Bulletin 65*.

transmitters regulated by the Commission.”¹² Further, the FCC’s rules require that if the MPE limits are exceeded in an accessible area due to the emissions of multiple transmitters, that actions necessary to bring the area into compliance “are the shared responsibility of all licensees whose transmitters produce, at the area in question, power density levels that exceed 5% of the power density exposure limit applicable to their particular transmitter.”¹³ The 5% threshold applies to the power density limit or to the square of electric or magnetic field strength limit.¹⁴ If the MPE limits are exceeded at an accessible area, all stations that produce a power density level exceeding 5% of the power density exposure limit applicable to its particular transmitter at that accessible area share responsibility to correct the problem.¹⁵

5. Broadcast stations that filed applications after October 15, 1997, for an initial construction permit, license, renewal or modification of an existing license were required to demonstrate compliance with the new RFR MPE limits, or to file an Environmental Assessment and undergo environmental review by Commission staff.¹⁶ In addition, all existing licensees, including all licensees at multiple transmitter sites, were required to come into compliance with the new RFR MPE limits by September 1, 2000, or to file an Environmental Assessment.¹⁷

6. **The Mount Wilson Inspection.** On July 11 and 12, 2002, agents from the FCC’s Enforcement Bureau field offices conducted an inspection of the Mt. Wilson telecommunications and antenna farm site located northeast of downtown Los Angeles, California, off Highway 2, on Mt. Wilson (5710 ft.) in the San Gabriel Mountains. The main antenna farm, encircled by Video Road, was not fully fenced or gated. Agents were able to access the site without encountering protective fencing or warning signs on July 11, 2002, on three sides of the area and on two sides of the area on July 12, 2002. Nestled within the broadcast towers on Video Road is the Mt. Wilson United States Post Office (91023), which serves the Mt. Wilson area. Approximately 330 yards southeast from the United States Post Office is the entrance to the Mt. Wilson Observatory and Park, which receives thousands of visitors a year. Given the accessibility of the site by the general public, along with the dearth of warning signs, the RFR MPE limits for “General Population/Uncontrolled Exposure” applied to any readings taken at the accessible areas.¹⁸

7. The agents identified a 10 ft. by 100 ft. area on a driveway into the main antenna farm

¹²See 47 C.F.R. §§ 1.1307(b), 1.1307(b)(1), 1.1310.

¹³*RF Second Memorandum Opinion and Order*, 12 FCC Rcd at 13520-21; 47 C.F.R. § 1.1307(b)(3).

¹⁴*RF Second Memorandum Opinion and Order*, 12 FCC Rcd at 13524; 47 C.F.R. § 1.1307(b)(3). Power density is equal to the square of the electric field strength divided by the characteristic impedance of free space (377 ohms). Similarly, power density is equal to the square of the magnetic field strength times the characteristic impedance of free space. The power density is expressed in milliwatts per square centimeter. *RF Second Memorandum Opinion and Order*, 12 FCC Rcd at n.74.

¹⁵*Id.* at 13520-21; 47 C.F.R. § 1.1307(b)(3).

¹⁶*RF Second Memorandum Opinion and Order*, 12 FCC Rcd at 13538; 47 C.F.R. § 1.1307(b).

¹⁷*RF Second Memorandum Opinion and Order*, 12 FCC Rcd at 13540; 47 C.F.R. § 1.1307(b)(5). See also, *Public Notice*, Year 2000 Deadline for Compliance with Commission’s Regulations Regarding Human Exposure to Radiofrequency Emissions (released Feb. 25, 2000); *Public Notice*, Erratum to February 25, 2000 Public Notice, 15 FCC Rcd 13600 (released April 27, 2000); *Public Notice*, Reminder of September 1, 2000, Deadline for Compliance with Regulations for Human Exposure to Radiofrequency Emissions, 15 FCC Rcd 18900 (released Aug. 24, 2000).

¹⁸See 47 C.F.R. § 1.1310, Table 1 (General population/uncontrolled limits apply in situations in which the general public may be exposed). “Members of the general public always fall under this category when exposure is not employment related” *RF First Report and Order*, 11 FCC Rcd 15123, 15139 (1996).

located off Video Road on July 11, 2002, that exceeded the FCC's public MPE limits at ground level. The identified area on the driveway was only approximately 100 feet from the United States Post Office, accessible to the general public and not marked with any RFR warning signs. On July 11, 2002, agents made power density measurements throughout the identified area on the driveway that ranged from 152.5% to 197.5% of the public RFR MPE limit. Thus, conservatively, the RFR fields exceeded the MPE limits for the general population by over 50%.

8. After identifying and marking the area on the driveway exceeding the RFR MPE public limits, the agents observed a broken chain on the ground to one side of the entrance to the driveway, on top of a weathered and damaged "No Trespassing" sign. Just prior to the time the agents departed that area of the Mt. Wilson antenna farm on July 11, an engineer from one of the stations at the site repaired the chain, strung it across the driveway, and placed a RFR warning sign on the chain. Several broadcast station engineers familiar with the site admitted to FCC agents that the chain had not been attached for several days prior to the inspection on July 11 and most likely had been taken down by contractors working for licensees at the site.

9. On July 12, 2002, FCC agents, with the cooperation of all the broadcasters at the Mt. Wilson antenna farm, conducted additional measurements at the area marked and identified as exceeding the public RFR MPE limits.¹⁹ Although on July 11 an engineer from one of the stations at the site repaired the chain and strung it across the driveway, Commission agents noted on July 12 that the area exceeding the public limit was still accessible to the general public exiting from the Post Office and did not have RFR warning signs posted. In other words, agents were able to access the site without encountering protective fencing or warning signs on July 11, 2002 on three sides of the area and on two sides of the area on July 12, 2002. The agents marked a single spot in the middle of the approximately 10 feet by 100 feet area identified on July 11 as exceeding the MPE public limits and made RFR measurements with all stations transmitting to establish the overall power density level. The overall RFR power density measurement on the driveway was 160.5% of the MPE public limit with all stations in operation.²⁰ Field agents then requested each licensee in the vicinity of the identified area to temporarily and sequentially power down its transmitter. Field agents made two spatially averaged RFR power density measurements for each broadcast station while its transmitter was powered off to determine the power density level produced by each transmitter and to determine which transmitters were producing power density levels that exceeded 5% or more of its individual MPE limit at the identified area.²¹

¹⁹Agents contacted broadcast stations after the RFR measurements to arrange for On-Off testing on July 12, 2002.

²⁰Table 1 of Section 1.1310 specifies the applicable MPE limits in terms of power density (mW/cm^2) for FM and television broadcast station transmitters. The maximum power density levels permitted are frequency dependent. During the Mt. Wilson inspection, the FCC agents utilized a FCC owned, calibrated RF meter with a calibrated probe that measures the electric field from RF signals in the band 300 kHz to 40 GHz. The probe is a sensor designed to simultaneously measure the RF emissions of multiple transmitters on widely separated frequencies such as would occur at an antenna farm containing both FM broadcast stations and television stations and can be used to determine the total RF power level at a particular location. The probe's frequency response curve is "shaped" to mimic the FCC MPE limits. The energy of the signals the probe detects are converted to a power density, then calculated as a percentage of the MPE limit for the appropriate frequency and added together. The results are displayed on the meter as a percentage of the MPE limit. See, generally, *OET Bulletin 65* at Section 3, Measuring RF Fields.

²¹Section 1.1307(b)(3) of the Rules states: "In general, when the guidelines specified in § 1.1310 are exceeded in an accessible area due to the emissions from multiple fixed transmitters, actions necessary to bring the area into compliance are the shared responsibility of all licensees whose transmitters produce, at the area in question, power density levels that exceed 5% of the power density exposure limit applicable to their particular transmitter..." 47 C.F.R. § 1.1307(b)(3).

10. The on-air and off-air measurements indicated that four of the 21 stations within the vicinity were producing power density levels at significantly more than 5% of the public MPE limits applicable to their transmitter.²² When KBIG-FM went off the air, the RF level decreased to 78.75% of the MPE public limit indicating that KBIG-FM was producing a power density level that was 81.75 % of the MPE limit for its particular transmitter. Based on these measurements and further calculations, the power density level produced by station KBIG-FM was 0.1635 mW/cm². Based upon similar procedures, FM station KKBT was producing a power density level that was 11% of the MPE limit for its particular transmitter (a power density of 0.022 mW/cm²), FM station KRTH-FM was producing a power density level that was 11.75% of the MPE limit for its particular transmitter (a power density of 0.0235 mW/cm²), and TV station KWHY-TV was producing a power density level that was 10.5% of the MPE limit for its particular transmitter (a power density of 0.036 mW/cm²) to the total RFR in the area identified as exceeding the public RFR MPE limits.²³

11. On September 3, 2003, a field agent conducted an inspection of the Mt. Wilson site and found that the Mt. Wilson Licensees had subsequently installed additional fencing and warning signs. However, the field agent discovered that a gate leading to one of the entrances to the site was standing open. It appeared that although the Mt. Wilson Licensees had installed additional fencing and warning signs, they failed to exercise due diligence in restricting access to areas that exceeded the public MPE limits.

12. On October 22, 2003, the Commission issued a Notice of Apparent Liability for Forfeiture (“NAL”) to AMFM, Infinity, Telemundo, and Radio One for forfeitures in the amount of ten thousand dollars (\$10,000) each. Also, given the September 3, 2003 inspection, each of the Mt. Wilson Licensees was directed to file sworn statements describing its plans to ensure that the fences surrounding the area are shut and that the gates are locked. Each of the parties filed a response to the NAL on December 12, 2003. AMFM does not dispute the NAL,²⁴ while Infinity, Telemundo, and Radio One all argue the proposed forfeitures should be reduced, dismissed or rescinded.

13. **Infinity.** Infinity seeks reduction or rescission of the proposed forfeiture based on its allegations that the Commission agents did not make KRTH aware that they believed KRTH to be one of the stations exceeding the 5% RFR MPE threshold, that the NAL was premised on factual misunderstandings about the Mt Wilson site, and that Infinity has no legal right to control the non-compliant area.²⁵ Infinity also argues that the NAL represents an inequitable approach and that the Commission should be seeking a collaborative approach in its enforcement of the RFR Rules.²⁶ Finally, Infinity argues that, even if KRTH was part of a multi-user site RFR violation, the \$10,000 forfeiture

²² Measurements were taken for each transmitter operating at the site, including auxiliary, analog and digital transmitters.

²³The combined power density levels produced by the four stations listed in this *NAL* add up to 115% of the Commission’s MPE limits. The difference between the 115% produced by the four stations and the power density level measurements with all stations operational, 160.5%, is accounted for by the fact that there were 17 other stations that were not producing power density levels at significantly more than 5% of the public MPE limits, but did add to the overall power density level.

²⁴AMFM raised no issues in its response but noted that the field agent testing occurred while KBIG-FM was operating from its auxiliary facility. AMFM states that “[w]hen KBIG-FM operates from its main antenna the total RFR level on the area is reduced such that it remains within public MPE limits.” AMFM Response at 1. AMFM paid the NAL and thus this proceeding is final with respect to it.

²⁵Infinity Response at 6 - 7.

²⁶Infinity Response at 7.

amount should be apportioned among the violators according to “each station’s percentage violation to the overall power density at the problematic location.”²⁷

14. **Telemundo.** Telemundo argues that, in light of the complexities inherent to the Mt. Wilson site and RF radiation, no sufficiently reliable evidence justifies inclusion of KWHY. Telemundo asserts that the margin of uncertainty is too great given the broadband methodology used by the FCC agents.²⁸ Telemundo notes that the NAL “itself implies that the Commission was aware of some uncertainty in their measurements which may be why the Notice, without explanation, did not name any party that may have exceeded the 5 percent threshold but did not exceed a 10 percent threshold.”²⁹ Telemundo questions why the Commission did not include these parties and why the Commission did not address uncertainty factors in the NAL.³⁰ Telemundo asserts that it made narrowband measurements on December 1, 2003, that are more accurate than the measurements made by the field agents, and that these measurements show that KWHY’s contribution to have been approximately 2.3%.³¹ Telemundo also asserts that using the Commission’s predictive methodology to calculate projections of power density results in a contribution of 2.1% for KWHY.³² Finally, Telemundo argues that it should be neither liable for the forfeiture nor the “monitoring requirement,” but if it is found liable, the forfeiture amount should be divided proportionately among the RFR contributors.³³

15. **Radio One.** Radio One states that the Commission may have erred by assigning the power density level of KHHT(FM), which broadcasts from the same tower as KKBT(FM), to KKBT(FM) in its field measurements.³⁴ Radio One also argues, pursuant to a study it conducted in January of 2002, that KKBT(FM) contributes less than 5% of the general public MPE limits at the Mt. Wilson site, and, consequently, that KKBT(FM) was not a contributor to the area of non-compliance.³⁵ Finally, Radio One argues that even if the Commission did not err in its field measurements, Radio One’s reliance on its field study was reasonable and was a good faith basis for Radio One’s belief that KKBT(FM) was not required to undertake the obligations set forth in Section 1.1307(b)(3) concerning stations that exceed the 5% RFR MPE threshold.³⁶

III. DISCUSSION

16. The proposed forfeiture amounts in this case were assessed in accordance with Section

²⁷Infinity Response at 10 – 12.

²⁸Telemundo Response at 6 – 8.

²⁹Telemundo Response at 8 n.18.

³⁰Telemundo Response at 8 n.18.

³¹Telemundo Response at 8 – 9.

³²Telemundo Response at 10.

³³Telemundo Response at 11 – 12.

³⁴Radio One Response at 4 – 5.

³⁵Radio One Response at 3 – 4.

³⁶Radio One Response at 6. We note that Radio One also incorporates by reference the responses filed by Infinity and Telemundo.

503(b) of the Act,³⁷ Section 1.80 of the Rules,³⁸ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement").³⁹ In examining the Mt. Wilson Licensees' responses, Section 503(b) of the Act requires the Commission take into account the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and any such matters as justice may require.⁴⁰

17. **Infinity.** Infinity alleges that the field agents did not make KRTH aware until after the inspection that they believed KRTH to be one of the stations exceeding the 5% RFR MPE threshold and that the NAL is premised on key factual misunderstandings about the Mt. Wilson multi-user site.⁴¹ Infinity also alleges it "has no legal right to set foot on the Driveway, nor does it have a legal right to erect, maintain or control gates or fencing on or around the Driveway."⁴² Infinity argues that the NAL represents an inequitable approach and that the Commission should be seeking a collaborative approach, by notifying the stations exceeding the 5% RFR MPE threshold, ascertaining leasehold rights in the driveway, and working with the stations to produce a "common solution" that would make the Mt. Wilson site "a model of cooperation and RFR compliance."⁴³ Finally, Infinity argues that, assuming KRTH was part of a multi-user site RFR violation, the Commission should treat the alleged violation as a single violation with a total forfeiture amount of \$10,000, to be apportioned among the violators according to "each station's percentage violation to the overall power density at the problematic location."⁴⁴

18. Infinity first argues that the Commission agents did not make KRTH aware until after the inspection that they believed KRTH to be one of the stations exceeding the 5% RFR MPE threshold.⁴⁵ While there is no legal requirement to notify an entity of a violation prior to an NAL, in fact Infinity and all the other Mt. Wilson Licensees were advised on July 12, 2002 that publicly accessible areas at the Mt. Wilson site exceeded the public MPE. While Infinity, like the other Mt. Wilson Licensees, did not receive notice of a proposed forfeiture until the NAL was issued, all of the stations, including KRTH, whose transmitters were part of the measurements, were given oral warnings concerning the need to keep the gates closed and locked on July 12, 2002. As noted in the NAL, the Mt. Wilson Licensees failed to keep the gates closed and locked, as revealed by the September 3, 2003 spot inspection.⁴⁶ Infinity also

³⁷47 U.S.C. § 503(b).

³⁸47 C.F.R. § 1.80.

³⁹*Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon denied*, 15 FCC Rcd 303 (1999).

⁴⁰47 U.S.C. § 503(b)(2)(d).

⁴¹Infinity Response at 6 - 7.

⁴²Infinity Response at 7.

⁴³Infinity Response at 8 – 10. Although Infinity does not dispute the field agents' measurements concerning its contribution to the RFR exceeding MPE limits at the Mt. Wilson site, it, like Telemundo, questions whether licensees whose measurements did not significantly exceed five percent were not held liable because of "inherent measurement imprecision." Infinity Response at 5 n. 5. We will discuss this issue below.

⁴⁴Infinity Response at 10 – 12.

⁴⁵Infinity Response at 7.

⁴⁶NAL at ¶ 19. A subsequent inspection of the Mt. Wilson site on August 17, 2004 revealed that all gates were

alleges that the Commission misunderstands the nature of the Mt. Wilson site and that Infinity “has no legal right to set foot on the Driveway, nor does it have a legal right to erect, maintain or control gates or fencing on or around the Driveway.”⁴⁷ Infinity operates KRTH’s transmitter on a multi-user site, and, since 1996, has been obligated, pursuant to Section 1.1307(b)(3) of the Rules to bring the area into compliance with the Commission’s RFR rules. The Commission expects “[o]wners of transmitter sites to allow applicants and licensees to take reasonable steps to comply with [these] requirements”⁴⁸ However, the Commission has concluded that “responsibilities pertaining to RF electromagnetic fields properly belong[] with our licensees and applicants, rather than with site owners.”⁴⁹ If in fact Infinity signed away rights that would have enabled it to meet its obligations under the rules, the Commission certainly would not consider that a mitigating fact in Infinity’s favor.

19. We also find that Infinity is mistaken in its interpretation of the meaning of its obligations under Sections 1.1307 and 1.1310, and the Commission’s *RF Second Memorandum Opinion and Order*. Infinity argues that the Commission should not engage in the “traditional enforcement model” and should be seeking a collaborative approach, by notifying the stations exceeding the five percent RFR MPE threshold, ascertaining leasehold rights in the Driveway, and working with the stations to produce a “common solution” that would make the Mt. Wilson site “a model of cooperation and RFR compliance.”⁵⁰ We do not disagree with Infinity’s stated goal and we encourage the Mt. Wilson Licensees to work together to make the Mt. Wilson site a model of cooperation and RFR compliance. However, it is the responsibility of the licensees on the site to engage in a collaborative approach to ensure that the public is not able to access areas which could exceed the public MPE limits.⁵¹ The Commission has encouraged licensees to engage in such collaborations and to “notify the appropriate Commission licensing bureau if the operator of a co-located transmitter will not cooperate in addressing a non-compliance problem.”⁵² The Commission has also directed the staff to work with industry to address such questions as may arise.⁵³ But our policy encouraging collaboration does not insulate licensees from enforcement action for violations. In neither the Rules nor the *RF Second Memorandum Opinion and Order*, does the Commission suggest that anything other than the “traditional enforcement model” be used with respect to a licensee that has willfully and repeatedly violated the Commission’s rules.⁵⁴

closed and locked.

⁴⁷Infinity Response at 8. Telemundo agrees and argues that no action directly within its control can make the specified area inaccessible or eliminate the hotspot. Telemundo Response at 12.

⁴⁸47 C.F.R. § 1.1307(b)(3).

⁴⁹*RF Second Memorandum Opinion and Order*, 12 FCC Rcd at 13522 (1997).

⁵⁰Infinity Response at 8 – 10. Infinity alleges that because the Driveway sits on United States Government property, as administered by the U.S. Forest Service, the FCC was “effectively wearing two hats – one as inspector and one as property owner.” Infinity Response at 9. Contrary to Infinity’s assertions, the Commission does not own or administer the Mt. Wilson site.

⁵¹47 C.F.R. §§ 1.1307(b)(3), 1.1310 .

⁵²*RF Second Memorandum Opinion and Order*, 13 FCC Rcd at 13524.

⁵³*RF Second Memorandum Opinion and Order*, 13 FCC Rcd at 13521.

⁵⁴Infinity also argues that the record does not establish an area of non-compliance on the date the Commission field agents performed their follow-up inspection because there “is no evidence of which Infinity is aware that on September 3, 2003, KBIG . . . was operating from it auxiliary antenna.” Publicly accessible, non-compliant areas at the Mt. Wilson site, including the area detailed in the NAL, have been known to the Mt. Wilson Licensees, since at

20. Finally, Infinity argues that, assuming KRTH was part of a multi-user site RFR violation, the Commission should treat the alleged violation as a single violation with a total forfeiture amount of \$10,000, to be apportioned among the violators according to “each station’s percentage violation to the overall power density at the problematic location.”⁵⁵ In the *RF Second Memorandum Opinion and Order*, the Commission suggested that at multi-user sites licensees could “assign compliance costs according to the percentage contributions at the non-complying area(s) for situations involving no change in transmitter costs.”⁵⁶ The Commission, however, did not state that forfeitures should be allocated in the same manner as compliance costs. Each of the Mt. Wilson Licensees was found to have apparently willfully and repeatedly exceeded the RFR MPE limits detailed in Section 1.1310 of our Rules. Consequently, each violation was a separate violation.⁵⁷ It is the unique intention of Section 1.1310 that the contribution of one station alone may not violate the rule, while that station, when joined by the RF contribution of other stations whose total RFR contributions exceed the MPE limits, may find itself in violation. Consequently, we require licensees to work together to ensure compliance. As each of the Mt. Wilson Licensees contributed over 5% of the total RFR exceeding the MPE limits, each of the licensees is equally responsible for bringing the area into compliance, according to Section 1.1307 of our Rules. Because the Mt. Wilson Licensees failed to bring the area into compliance, each is liable for an individual \$10,000 forfeiture, because of its contribution, pursuant to Section 1.1307(b), to the violation of Section 1.1310 of our Rules. By allocating the full forfeiture amount to each of the Mt. Wilson Licensees, we again remind all licensees at multi-user sites that they may be responsible for the full amount of a public safety forfeiture if they do not comply with Sections 1.1307 and 1.1310 of our Rules.

21. **Telemundo.** Telemundo argues that, in light of the complexities inherent to the Mt. Wilson site and RF radiation, no sufficiently reliable evidence justifies inclusion of KWHY. Telemundo asserts that the margin of uncertainty is too great given the broadband methodology used by the FCC agents.⁵⁸ Telemundo is correct in its assertion that there is an uncertainty factor in every measurement.⁵⁹ However, we do not agree with Telemundo’s assertion that the field agents’ broadband measurements are subject to far too much uncertainty to constitute evidence on which the Commission can base an enforcement action. Part of our measurement protocol involves averaging the measurements to avoid uncertainty. Telemundo states that two broadband measurements at the same location under the same conditions are likely to vary as much as five to 10 percent. Telemundo asserts that the relevant baseline for all transmitters at the Mt. Wilson site was 160.5 percent and therefore, “assuming the bare minimum of uncertainty, the baseline is somewhere in a range of 152.5 to 168.5 percent.”⁶⁰ From this assertion, Telemundo concludes that “there is no way to know where in the range each of the measurements fell

least July 12, 2002, and, as KKBT(FM)’s and KWHY-TV’s filings show, since as early as 1997. It appears that Infinity has made no effort to ascertain the RFR situation at the Mt. Wilson site, by contacting other licensees, or by setting forth a plan to ensure non-compliant areas be made compliant or inaccessible to the public. Infinity provides no evidence to show that no excess RFR existed at the non-compliant areas on September 3, 2003. It also does not show that it was meeting its obligations under Section 1.1307(b)(3) to ensure that the public was not able to access an area known to have had exceeded RFR MPE in the past.

⁵⁵Infinity Response at 11 – 12.

⁵⁶*RF Second Memorandum Opinion and Order*, 13 FCC Rcd at 13523.

⁵⁷Because we have determined that violating Section 1.1310 is a public safety violation, a forfeiture of \$10,000 was proposed for each of the licensees. *See also, A-O Broadcasting Corporation*, 17 FCC Rcd 24182(2002).

⁵⁸Telemundo Response at 6 – 8.

⁵⁹*See e.g., E. Schrodinger: About Heisenberg Uncertainty Relation*, 26 *Bulg. J. Phys.* 193 (1999).

⁶⁰Telemundo Response at 6 – 7.

[and states that it] is entirely possible that, if measurements could be perfect, the RFR Baseline should have been 153 percent and the Per Station Measurement for KWHY should have been 151 percent, yielding a KWHY contribution of 2 percent.”⁶¹

22. Telemundo envisions a scenario that, if accepted, circumvents the RFR public safety rules to the detriment of the public. The Commission’s Rules state that “actions necessary to bring the area into compliance are the shared responsibility of all licensees whose transmitters produce, at the area in question, power density levels that exceed 5% of the power density exposure limit applicable to their particular transmitter . . .”⁶² As part of the investigation underlying the NAL, the Commission’s field agents, on July 11, 2002, took four measurements, one each in the north, south, east and west directions to establish the total RFR contributions. On July 12, 2002, two measurements were taken when each licensee powered off. The two measurements were then averaged. The measurements and subsequent calculations detailed in the NAL were made taking into account both the manufacturer and calibration specifications for the particular probes and meters used.⁶³ Additionally, the procedure to conduct at least two measurements, and average those measurements helps mitigate inherent measurement error in the equipment. The measurements taken concerning KWHY-TV showed that the station produced 10.5% of its particular MPE limit in an accessible area that exceeded the public MPE limit. Even assuming the best case scenario for KWHY-TV, its contribution would be 5.25 %. Conversely, assuming the worst case scenario for KWHY-TV, its contribution would be 21%. Both extremes put the station above the 5% category defined in Section 1.1307(b)(3).⁶⁴

23. Telemundo notes that the NAL “itself implies that the Commission was aware of some uncertainty in their measurements which may be why the Notice, without explanation, did not name any party that may have exceeded the 5 percent threshold but did not exceed a 10 percent threshold.”⁶⁵ Telemundo questions why the Commission did not include these parties and why the Commission did not address uncertainty in the NAL.⁶⁶ Infinity also questions why stations with RFR readings closer to five percent but not “significantly exceeding” five percent were not included. Infinity argues that any FCC change of the five percent standard set forth in the Multi-User Site RFR Rules to a nebulous “significantly exceeds five percent” standard would constitute an impermissible modification of the Multi-User Site RFR Rule in an adjudicatory context, undermining the basis for this enforcement action.⁶⁷

⁶¹Telemundo Response at 7. We note that the uncertainty factors reported by Telemundo in its response indicate a plus/minus (+/-) range. Despite this fact Telemundo assumes, in this hypothesis, that the amount of RFR radiated by KWHY is always diminished, rather than increased, by the uncertainty factor.

⁶²47 C.F.R. § 1.1307(b)(3).

⁶³As noted in the NAL at ¶ 9, n. 17, the FCC agents utilized an FCC owned, calibrated RF meter with a calibrated probe. For the particular meter and probe utilized on July 12, 2002, the manufacturer and calibration specified deviations were applied. As noted in Telemundo’s Response, different probes and meters by different manufacturers all have different deviation or measurement uncertainty factors. *See, e.g.*, Telemundo Response at Exhibit 1, p. 10. Consequently, no universal uncertainty factor exists for all situations.

⁶⁴Licensees are cautioned not to assume that this particular uncertainty factor will be made part of future RFR enforcement actions. This enforcement action, like all enforcement actions, is fact-specific and based on the circumstances known at the time of the investigation.

⁶⁵Telemundo Response at 8 n.18.

⁶⁶Telemundo Response at 8 n.18.

⁶⁷Infinity Response at 5 n.5.

24. We find that the NAL did not create a new “nebulous” standard nor did it amend, through the adjudicatory process, the Commission’s RFR Rules. Section 503(b) of the Act does not require us to issue a forfeiture for every apparent violation we investigate.⁶⁸ The Commission is a regulatory agency with broad prosecutorial discretion in enforcement proceedings.⁶⁹ The courts have found that, as a general matter, the Commission is best positioned to weigh the benefits of pursuing an adjudication against the costs to the agency and the likelihood of success.⁷⁰ We find that issuing the NAL against those licensees that produced power density levels significantly over the 5% threshold was an appropriate use of that discretion. The fact that we could have also taken action against other, less significant violators, does not mitigate the instant licensees’ responsibility to ensure compliance nor does it alter the responsibility of licensees contributing at the 5% threshold to ensure compliance.

25. Telemundo also made narrowband measurements on December 1, 2003. Telemundo claims that these measurements are more accurate than the measurements made by the field agents and that these measurements show that KWHY’s contribution to have been approximately 2.3%.⁷¹ We do not dispute the accuracy of the narrowband measurements but we cannot accept them as proof that the field agents’ measurements were made in error.⁷² The Telemundo measurements were made almost 17 months after the field agents’ investigation. The measurements made by Telemundo may very well be accurate for December 1, 2003. There is no evidence that they are accurate for July 11 and 12, 2002. Notably, Telemundo does not attempt to replicate the mix of transmitters in use at the Mt. Wilson site on July 11 and 12, 2002, nor does Telemundo indicate whether KBIG was operating from its main or auxiliary transmitter on December 1, 2003, nor does Telemundo delineate the transmitter changes at the Mt. Wilson site during the 17 month period between July of 2002 and December of 2003. Telemundo should not be surprised that an area in excess of the public MPE limits existed at the Mt. Wilson site. The most recent license renewal application for KWHY-TV includes an RF Radiation Compliance Statement (“RF Statement”).⁷³ The RF Statement indicates that areas that exceeded the public MPE limit existed along Video Road and near the U.S Post Office. The RFR fields in these areas ranged from 155% to 205% of the public limit.⁷⁴ The RF Statement recommended that “[d]ue to the existence of the large area in excess of the public limit near the [Post Office] at the center of the site under all operating conditions,” that one or both of the roads accessing the site be gated off.⁷⁵

26. Telemundo also asserts that the Commission’s predictive methodology, used to calculate

⁶⁸*In the Matter of Webnet Communications, Inc.*, 18 FCC Rcd 6870, 6877 (2003).

⁶⁹*In re: Notices of Apparent Liability for Forfeitures of Emery Telephone*, 15 FCC Rcd 7181, 7186 (1999).

⁷⁰*New York State Dept. of Law v. F.C.C.*, 984 F.2d 1209, 1213 (D.C. Cir. 1993).

⁷¹Telemundo Response at 8 – 9. Telemundo states that “KWHY’s own operations were the same on July 11 and 12, 2002, and December 1, 2003.” Telemundo Response at 8 n. 20.

⁷²Telemundo also argues that the FCC’s Media Bureau’s precedent confirms reliance on later, more accurate RF radiation studies in lieu of the Commission’s own methodology, citing *Edwards W. Hummers, Jr., Esquire*, 18 FCC Rcd 22066 (MB 2003) (“*Hummer Letter*”). Telemundo Response at 9. Telemundo mischaracterizes the *Hummer Letter*. In neither the *Hummer Letter*, nor in the present case, was there a convincing showing, or a finding, that the measurements taken by FCC staff were inaccurate, or that they were superseded by later-filed data.

⁷³BRCT-19980731LM, filed July 31, 1998. The RF Statement was filed on December 3, 1998. The renewal was granted on December 8, 1998.

⁷⁴KWHY-TV EA Amendment at 4 – 5.

⁷⁵KWHY-TV EA Amendment at 6 – 7.

projections of powers density, results in a contribution of 2.1% for KWHY. Telemundo argues that parties should be able to rely on calculated projections of power density to ensure their compliance with the Commission's Rules.⁷⁶ While this may be true in many situations, the Commission's Office of Engineering and Technology has stated, in its guidance concerning predictive methods of determining RF field strength:

When considering the contributions to field strength or power density from other RF sources, care should be taken to ensure that such variables such as reflection and re-radiation are considered. In cases involving very complex sites predictions of RF fields may not be possible, and a measurement survey may be necessary⁷⁷

Bulletin 65 specifically states that at a multi-user site, such as an antenna farm, actual measurements of the RF field may be necessary to determine whether there is a potential for human exposure in excess of the MPE limits specified by the FCC.⁷⁸ We therefore find that the calculations made by Telemundo in December 2003 do not disprove measurements made by the field agents in July 2002.⁷⁹ Where public safety is at issue, we prefer actual measurements to calculations at multi-user antenna sites.⁸⁰

27. Finally, Telemundo argues that it should be neither liable for the forfeiture nor the monitoring requirement, but if it is found liable, the forfeiture amount should be divided proportionately among the RFR contributors because "Section 1.1307(b)(3) never indicates that five percent contributors should share evenly in any responsibility."⁸¹ As we stated above, each of the Mt. Wilson Licensees was found to have apparently willfully and repeatedly contributed in excess of 5% to the RFR MPE levels that exceeded the public limits detailed in Section 1.1310 of our Rules. Consequently, each violation was a separate violation.⁸² Under the circumstances here, particularly given the modest nature of the forfeiture

⁷⁶Telemundo Response at 10, citing *RF Second Memorandum Opinion and Order* 12 FCC Rcd 13494, 13521 (Applicants should be able to calculate, based on frequency, power, and antenna configuration, the distance from their transmitting antenna where signal produces field levels equal to, or greater than, 5% of the relevant RF exposure limit).

⁷⁷OET Bulletin 65 at 36.

⁷⁸OET Bulletin 65 at 44. This is consistent with Commission's rules and precedent preferring measurements to calculations in certain cases. *See e.g.*, 47 C.F.R. § 73.153 (in determination of interference, groundwave field strength measurements will take precedence over theoretical values); *In re Applications of Benjamin F. Thomas and Roy A. Grove D.B.A. Greencastle Broadcasting Co.*, 16 FCC 2d 923 (1969) (measurement data indicating no prohibited overlap are to be preferred over the calculations based on figure M-3 conductivities).

⁷⁹Telemundo states that at no point between July 2002 and October 2003 did the Commission contact KWHY to warn it that it was allegedly contributing to an ongoing safety violation. Telemundo Response at 4 -5. As stated above, each of the stations that engaged in the field measurements with the field agents on July 12, 2002, received an oral warning concerning the public access to the site and an oral warning that publicly accessible areas exceeded the RFR public MPE limits. Also, given the RF Statement in the most recent KWHY-TV renewal, Telemundo should have already been aware that RFR in excess of the public MPE limits was found at parts of the Mt. Wilson site. In any event, as noted above, no warning of a violation is required before an NAL is issued.

⁸⁰We also note that, unlike Radio One, which made its calculations six months prior to the field agents' investigation and sought a good faith exception, Telemundo made its calculations almost 17 months after the measurements were made by the field agents.

⁸¹Telemundo Response at 11 – 12.

⁸²Pursuant to Section 1.80 of our Rules, because we have determined that violating Section 1.1310 is a public safety violation, a forfeiture of \$10,000 was proposed for each of the licensees. *See* 47 C.F.R. § 1.80.

amount, we conclude the same amount for all the licensees is appropriate.

28. **Radio One.** Radio One argues that the Commission may have been confusing KKBT(FM)'s measurements with those of KHHT(FM). Radio One also states that in January of 2002, it retained engineering consultants to conduct a radio frequency electromagnetic field study and power density analysis of KKBT(FM)'s broadcast transmissions at the Mt. Wilson site ("KKBT Study").⁸³ According to Radio One, the "study computed a power density value for KKBT(FM) of 0.0063 mW/cm², or less than 3.2% of the RFR MPE level of 0.2 mW/cm² for uncontrolled areas."⁸⁴ Based on this analysis, Radio One's "study concluded that since KKBT(FM) contributed less than 5% of the general public guideline levels at the Mt. Wilson site, KKBT(FM) was believed "not to be a contributor to area non-compliance."⁸⁵ Radio One argues that in the event the Commission was not confusing its measurements for KHHT(FM) and KKBT(FM), Radio One should be given a good faith exception for reliance on the January 2002 study.⁸⁶

29. Radio One states that the Commission may have erred by assigning the power density level of KHHT(FM), which broadcasts from the same tower as KKBT(FM), to KKBT(FM) in its field tests.⁸⁷ We disagree. The agents systematically contacted the licensees for the transmitters and then requested each licensee in the vicinity of the identified area to temporarily and sequentially power down its transmitter. An agent accompanied each engineer as he or she "powered down" the appropriate transmitter to ensure that no errors were made concerning which transmitter was being measured. Separate measurements were made for KKBT(FM) and KHHT(FM) regardless of the fact the two stations broadcast from the same tower.

30. Radio One also states, pursuant to the KKBT Study, that measurements were taken and "hotspots" were found that exceeded the public RFR MPE limits in two locations, both in front of buildings accessible to the public.⁸⁸ While the KKBT Study states that the measurements show amounts between 24% and 27% of the "controlled" MPE (or between 120% and 135% of the public MPE), it does not detail the actual measurements that were taken, nor does it indicate that any individual measurements were taken for any of the stations on the Mt. Wilson Site.⁸⁹ Instead, the KKBT Study makes calculations using equations for FM antennas, "incorporating the relative field factor" to compute KKBT's contribution, which it calculates to be 0.0063 mW/cm², or less than 3.2% of the RFR MPE level of 0.2

⁸³Radio One Response at 3 – 4. Supplement of Radio One, filed August 19, 2004 ("KKBT Study").

⁸⁴Radio One Response at 3.

⁸⁵Radio One Response at 3 – 4.

⁸⁶Radio One Response at 3 – 6.

⁸⁷Radio One Response at 4 – 5. Radio One states that, given effective radiated power ("ERP") of each station and its height of each station's antenna radiation center, "[i]t would seem much more probable that the signal the NAL attributes to KKBT(FM) . . . actually is KHHT(FM)' signal." Radio One Response at 4.

⁸⁸KKBT Study at 1. "Both locations were on the street in front of the Allcom building. One . . . in front of the KTLA-TV building and the other in front of a power distribution pad just west of the Post Office."

⁸⁹KKBT Study at 1. According to the study, "the location in front of the KTLA-TV the E-field average was 27% of the controlled maximum permissible value and the H-field average was 25%. E-field averages at the location west of the Post Office were 25% of the MPE level while the H-field level was 24%." The study concludes that the "sources of RF appear to be emanating from the direction of the transmitting facilities to KBIG." The study does not indicate if the KBIG auxiliary transmitter was in use on that day.

mW/cm² for uncontrolled (public) areas.⁹⁰

31. Section 1.1307(b)(3) of the Rules states that when the guidelines specified in Section 1.1310 are exceeded in an accessible area due to emissions from multiple fixed transmitters, actions necessary to bring the area into compliance shall be the shared responsibility of all licensees whose transmitters exceed five percent of the power density exposure limit applicable to their particular transmitter.⁹¹ As stated above, the Commission's Office of Engineering and Technology has given guidance cautioning licensees at very complex sites, such as Mt. Wilson, that "predictions of RF fields may not be possible, and a measurement survey may be necessary"⁹² The KKBT Study measured publicly accessible areas that exceed the public MPE limit. The study did not include an actual on-off measurement of the actual contribution of any particular transmitter, including that of KKBT.⁹³ Rather, Radio One calculated the contribution of its transmitter to the RFR levels it found exceeded the public maximum permissible exposure limit.

32. We note that a Radio Frequency Measurement Report ("RF Amendment"), filed as an amendment to the most recent license renewal application for KKBT(FM),⁹⁴ includes a study, dated September 1997, detailing the radio frequency electromagnetic field measurements for the Mt. Wilson site. According to the RF Amendment, calculations showed that KKBT(FM) contributes "greater than 10 uW/cm² or greater than 5% of 0.2 mW/cm² and therefore [is] considered [a] contributor[] to electromagnetic fields in non-controlled areas."⁹⁵ The RF Amendment also states that measurements showed that a "couple of 'hot spots' were found against a fence along the access road just east of the KKBT [] site and one fifty foot long by six feet wide strip was found in the center of the road just south of the site in front of the Allcom building."⁹⁶ Neither the Radio One Response nor the KKBT Study addresses the RF Amendment or how conditions have changed to such an extent, or permanently, such that the contribution allocated to KKBT(FM) in the RF Amendment is no longer accurate.⁹⁷ Had Radio One conducted a study which provided actual measurements of its station's contribution, we would be able to better consider Radio One's request for a good faith exception.⁹⁸ We also note that Radio One's

⁹⁰KKBT Study at 1. There is no information in the record that Radio One advised any licensee at the Mt. Wilson site of its finding that publicly accessible areas at the site exceeded the public MPE.

⁹¹47 C.F.R. § 1.1307(b)(3)(ii).

⁹²OET Bulletin 65 at 36.

⁹³In order to ascertain KKBT's actual contribution on the day the measurements were taken, Radio One needed only to "power down" the KKBT transmitter for a short period of time and make measurements at the "hot spots" indicated in the study. The KKBT Study does not indicate why Radio One did not do so, particularly given Radio One's own finding that publicly accessible areas on the Mt. Wilson site were exposed to RFR in excess of the public MPE.

⁹⁴File No. BRH-970730ZC, filed July 30, 1997. The RF Amendment was filed on December 22, 1997. We note that at the time of the filing, the call sign of KKBT(FM) was KIBB(FM) and that the call sign for KHHT(FM) was KKBT(FM). *See also* Radio One Response at 6 n. 4. The renewal was granted on January 14, 1998.

⁹⁵RF Amendment at 2. In the RF Amendment, the current KKBT(FM) is referred to as KIBB(FM).

⁹⁶RF Amendment at 3. Apparently, the Allcom building also housed the Mt. Wilson Post Office.

⁹⁷We note that since the grant of the KKBT(FM) license renewal in 1998, no applications for modification of KKBT(FM)'s facilities have been granted by the Commission.

⁹⁸We would not consider such a noncontemporaneous study to be a basis to refute the field agents' measurements of July 11 and 12, 2002, in any case, because of the time elapsed between the two studies and the continual changes made at the Mt. Wilson site by the dozens of broadcast, and hundreds of non-broadcast entities that use the site.

measurements revealed two “hot spots” in publicly accessible areas. Radio One, however, apparently made no contact with the other licensees on the site to determine the actual contributing and, therefore, responsible parties, or, more importantly, to make the non-compliant areas inaccessible to the public. Given the complex nature of the Mt. Wilson site, the Bulletin 65 guidance, and the statements made concerning KKBT(FM)’s RFR contribution in the RF Amendment, we do not believe that Radio One is entitled to a good faith exception because of the January 2002 study.

33. We also continue to find that KKBT(FM) contributed greater than 5% to the overall RFR MPE. Radio One is unable to show that the field agents attributed the KHHT(FM) measurements to KKBT(FM). Radio One’s KKBT Study, done in January 2002, reveals “hot spots” similar to the area of non-compliance found by the FCC agents in July 2002. The KKBT Study, however, does not measure or calculate KKBT(FM)’s relative contribution to the “hot spots” when KBIG is operating with its auxiliary transmitter. Obtaining different contribution levels at different points in time is expected at sites as Mt. Wilson that include daily changes in the RF environment based on what main or auxiliary transmitters are operating at any given time at variable power levels. It is precisely this type of publicly accessible, complex, multi-user site that warrants licensee cooperation to ensure the public is protected from exposure to RFR levels above the MPE limit.

34. All of the Mt. Wilson Licensees were also required to submit sworn statements “describing their plans to ensure that the fences surrounding the area are shut and that the gates are locked.”⁹⁹ AMFM states that if it intends to use the KBIG-FM auxiliary facility “at a power greater than that which would cause the public MPE limits to be exceeded on the driveway hotspot, [it] will confirm that the driveway off Video Road is secured”¹⁰⁰ Infinity, Telemundo and Radio One all submitted sworn statements indicating that when KBIG-FM decides to operate from its auxiliary transmitter, it will confirm that the driveway is secured.¹⁰¹ These licensees continue to misinterpret their responsibilities under the Commission’s RFR Rules. Each of the four Mt. Wilson Licensees exceeded the five percent limit, therefore each share in the responsibility to bring the area into compliance¹⁰² and make the non-compliant area inaccessible to the public.

35. We have examined the responses to the NAL from each of the Mt. Wilson Licensees pursuant to the statutory factors above, as well as in conjunction with the Policy Statement. As a result of our review, we conclude that Radio One, Infinity, and Telemundo, willfully and repeatedly violated Section 1.1310 of the Rules and the appropriate forfeiture amount is ten thousand dollars (\$10,000) for each.¹⁰³

IV. ORDERING CLAUSES

36. Accordingly, IT IS FURTHER ORDERED THAT, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311, and 1.80 of the Rules, Radio One Licenses, LLC, licensee of FM station KKBT IS LIABLE FOR A MONETARY FORFEITURE in the amount of ten thousand dollars (\$10,000)

⁹⁹NAL at ¶ 19.

¹⁰⁰AMFM Response, Declaration of Jeff Littlejohn.

¹⁰¹Infinity Response, Telemundo Response, Radio One Response.

¹⁰²47 C.F.R. § 1.1307(b)(3).

¹⁰³Because we have found no reason to reduce or rescind the forfeiture, we also deny Telemundo’s request to dismiss the requirement that the Mt. Wilson Licensees submit their plans to ensure that the fences surrounding the area are shut and that the gates are locked.

for willfully and repeatedly violating Section 1.1310 of the Rules.

37. IT IS FURTHER ORDERED THAT, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311, and 1.80 of the Rules, Infinity Broadcasting Operations, Inc., licensee of station KRTH-FM, IS LIABLE FOR A MONETARY FORFEITURE in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 1.1310 of the Rules.

38. IT IS FURTHER ORDERED THAT, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311, and 1.80 of the Rules, Telemundo of Los Angeles License Corporation, licensee of station KWHY-TV, IS LIABLE FOR A MONETARY FORFEITURE in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 1.1310 of the Rules.

39. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁰⁴ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰⁵

40. IT IS FURTHER ORDERED THAT a copy of this ORDER shall be sent by First Class and Certified Mail, Return Receipt Requested, to Radio One Licenses, LLC, 5900 Princess Garden Parkway, 8th Floor, Lanham, MD 20706; Infinity Broadcasting Operations, Inc., 2000 K Street, NW, Suite 725, Washington, DC 20006; and Telemundo of Los Angeles License Corporation, 2290 West Eight Avenue, Hialeah, FL 33010.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁰⁴47 U.S.C. § 504(a).

¹⁰⁵See 47 C.F.R. § 1.1914.